IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.4030 OF 2006
IN
SUIT NO.3307 OF 1985

John S.D'souza ...Plaintiff
Vs.
M/s.Sonal Construction ...Defendant

Shri K.N.Khandekar i/by Mayur Narendra & Co for the Plaintiff.
Shri Y.R.Shah for the Defendant.

CORAM : ABHAY S.OKA, J.
DATED : JULY 18, 2007.

P.C.:

. Not on board. Taken on board.

1. Heard the learned counsel appearing for the Defendant in support of the Notice of Motion and the learned counsel appearing for the Plaintiff. The prayer in the Notice of Motion is for taking the written statement of the Defendant on record.

2. The Notice of Motion is opposed on the ground that in a suit of 1985, the Notice of Motion is taken out in the year 2006 for taking the written statement on record. The second contention is that by order dated 03rd March, 2006 this Court directed the suit to proceed ex-parte against the Defendant as no written statement has been filed and there is no specific prayer made for setting aside the said order.

3. It is pointed out that in a similar suit, a Notice of Motion taken out by the Defendant for identical relief has been made absolute subject to

payment of costs of Rs.15,000/-.

4. The Defendant has set out reasons in the affidavit in support for not filing the written statement. The material reasons are set out in the paragraph No.2 of the affidavit in support. In view of the said reasons, a case is made out for permitting the Defendant to file written statement subject to payment of costs of Rs.15,000/-. The objection raised by the counsel for the Plaintiff regarding failure to apply for setting aside order dated 03rd March, 2006 has no merit. Once the written statement is filed, obviously the suit cannot proceed ex-parte.

5. Hence, Notice of Motion is made absolute in terms of prayer clause (a) subject to Defendant paying costs of Rs.15,000/- to the Plaintiff within a period of four weeks from today. Payment of costs will be a condition precedent.

6. If the amount of costs is paid by the Defendant, the suit will be listed on board on 21st August, 2007 for settlement of issues and parties will file draft issues on that day. If order of payment of costs is not complied with within the stipulated time, on the next date, the suit will be placed on board under the caption of "Undefended Suits for Expire Decree".

JUDGE